

INCOME TAX – FILING APPEALS TO ITAT – NEW INSTRUCTIONS ISSUED

Section 253 Of The Income-Tax Act, 1961 – Appellate Tribunal – Appeals To – Instructions Regarding Standard Operating Procedure On Filing Of Appeals To ITAT Under Section 253 And Related Matters

INSTRUCTION NO. 08/2011 [F NO. 279/MISC./M- 43/2011-ITJ], DATED 11-8-2011

With a view to streamline the process of filing appeals to ITAT and in suppression of the existing Instructions on the subject in general, and Instruction No. 1274 dated 10-8-1979, Instruction No. 1353 dated 9-9-1980, Instruction No. 1387 dated 3-3-1981, Instruction No. 1493 dated 18-11-1982, Instruction No. 1570 dated 4-7-1984, Instruction No. 1894 dated 16-6-1992, and Instruction No. 1921 dated 23-1-1995, in particular, the following Instructions are issued herewith for compliance by all concerned:

Responsibility for Filing of Appeals to ITAT

2. Subject to the Instructions issued by the CBDT for the time being in force on monetary limits for filing appeals under section 268A, the jurisdictional CIT shall be the authority to decide whether to contest an order of the CIT(A), in the light of the facts and circumstances of a particular case and the statutory provisions. While taking decision in the matter, he shall, *inter alia*, take into consideration reports of the authorities below. Once the CIT communicates his decision to contest a particular order of CIT(A), it shall be the responsibility of the Range Head to ensure timely and proper filing of appeal in the ITAT and consequential follow up actions. The actual filing of appeal is to be ensured by the Assessing Officer (AO).

Time Lines for Filing of Appeals in ITAT under section 253 of the Act

3. Time lines, indicating clearly the responsibilities of each level involved in the process, for filing appeals to ITAT have been laid down in Annexure-I to this instruction for strict adherence by all concerned.

4. Appeal Effect and Scrutiny Report

i. On receipt of the order of the CIT(A), the AO shall give appeal effect promptly and properly. The Range Head shall monitor correctness and timely appeal effect in respect of orders of CIT(A).

ii. Any pendency in regard to the appeal effect beyond one month shall be reported by the Range Head to the CIT in the DO reporting monthly activities of the Range, along with reasons for the delay.

iii. With a view to provide relevant inputs to the decision making authority for filing appeals to ITAT, a format for scrutiny report is prescribed herewith at Annexure-II.

iv. In respect of appeals decided in favour of revenue, the AO shall submit only Part-I of the proforma in Annexure-II to the Range Head and there will be no need to fill in other parts of the proforma in such cases.

5. Quality of Appeals

i. The CsIT shall ensure that appeals to ITAT are filed only where there is proper justification. Orders of CIT(A) on factual issues should be accepted unless the findings are perverse.

ii. While giving comments / recommendations or taking decision to contest CIT(A)'s order, the officers concerned shall, *inter alia*, ensure that the following issues have been taken into consideration:

(a) Facts of the case and basis of addition / disallowance are clearly brought out.

(b) Reasons for granting relief by the CIT(A) on the relevant issues are clearly spelt out.

(c) The reasons as to why the CIT(A) was not justified in recording the findings of fact or law on each issue are clearly brought out. Evasive stand or ambiguous language is to be avoided.

(d) If any factual finding by CIT (A) is inconsistent with or contrary to the material on record, the relevant material should be clearly identified to show perversity.

(e) Cogent reasons for the decision to file appeal on relevant issues are properly and clearly recorded by the CIT, as this will constitute the basis for further litigation in appropriate cases.

(f) The grounds of appeal arising out of the order of CIT(A) are carefully drafted to clearly spell out the grievance of the department and the relief sought.

(g) In case of mixed question of facts and law, the grounds of appeal should clearly bring out specific legal and factual issues to be contested.

(h) The grounds are precise and not argumentative.

iii. Along with authorization memo under section 253(2) and grounds of appeal, the CIT shall send a copy of comments of Range Head and reasons for his own decision authorizing appeal to the AO for his record and guidance.

iv. In case appeal has not been authorized against adverse order of the CIT(A), the decision should be conveyed to the AO along with copy of scrutiny report containing reasons for acceptance.

6. Proper Judicial Record Management System

6.1 The CIT shall, *inter alia*, ensure that once appeal to ITAT is authorized against the order of CIT (A), a separate judicial folder for the assessee for a particular year is maintained in his office. Among other things, the folder should have a copy of relevant assessment order (along with copies of key documents used as evidence in support of additions made), a copy of the remand report, if any, and the scrutiny report submitted by the authorities below.

6.2 Such judicial folder should be easily retrievable for scrutiny of ITAT order or Judgment of the High Court, as the case may be, at the time of considering further appeal in the case, if any. A similar judicial folder in respect of assessee's appeal under section 253 filed in ITAT, containing a copy of appeal memo filed by the assessee and other relevant documents should also be maintained for the aforesaid purpose.

7. Transfer of Jurisdiction outside CIT's Charge During Pendency of Appeal

7.1 In case of transfer of jurisdiction over a case from one CIT to another CIT charge during pendency of appeal, the transferor AO shall, while transferring the case records along with the judicial folders in CIT's office to the transferee AO, duly inform the change of jurisdiction to the Registrar ITAT with a copy to his CIT's office. This fact of intimation to the Registrar ITAT shall also be mentioned by him in the transfer memo. This procedure shall apply to the appeals filed by the department as well as by the assessee.

7.2 In such cases, if the ITAT order is received by the transferor CIT, he shall immediately return the same to the Registrar ITAT referring to the earlier intimation of transfer of jurisdiction and informing that in view of the transfer of jurisdiction it is the transferee CIT who holds jurisdiction over the case and as such the service of the order should be made on him. A copy of the communication to the Registrar should be endorsed to the transferee CIT along with the copy of Tribunal's order for taking further necessary action.

7.3 In case of transfer of jurisdiction over a case involving two different Benches of ITAT during the pendency of appeal, necessary steps shall be taken by the transferor CIT to request the ITAT Bench where the case is pending to transfer the same to the Bench of ITAT having jurisdiction over the cases of transferee AO. The matter may also be coordinated with the transferee CIT.

8. Preparation of Memorandum of Appeals / Papers etc.

The Range Head shall ensure that:

- i.* Once the grounds and authorization under section 253(2) for filing appeal are received from CIT, Form No. 36 *i.e.* Memo of appeal is duly filled-in and filed by AO, with all necessary annexures, in the registry of ITAT before expiry of limitation.
- ii.* The ITA No. of the appeal filed is obtained by AO and recorded on other sets (including office copy) of the appeal papers. The Range Head should communicate the same to the CIT within the prescribed time limit as in Annexure-I.
- iii.* There is proper vetting of Memorandum of Appeals as regards relevant facts therein before the appeal is actually filed.
- iv.* Necessary particulars including the correct PAN, tax effect involved are mentioned.
- v.* All annexures including copies of orders of authorities below are properly typed as per ITAT Rules to avoid defects/office objections.

vi. In case, any document such as agreement, seized papers, depositions etc. are crucial to the issues involved and considered by lower authorities, a copy of the same must be referred to at relevant place in appeal memo and its copy annexed thereto.

9. Filing of Appeal and Subsequent Monitoring

The CIT shall put in place proper mechanism with defined responsibility of different levels of officials in his charge to ensure that:

- i.* The appeal is filed in the ITAT within prescribed time limit as in Annexure-I.
- ii.* ITA/WTN Number allotted by the registry is obtained and recorded in judicial folder in CIT's office as mentioned in check list / proforma for scrutiny report on CIT(A) order at Annexure-II.
- iii.* In case, the registry of the ITAT notifies any defect, immediate steps are taken by the AO concerned to remove the same with the assistance of the office of CIT (DR) or Senior DR as the case may be.
- iv.* One set of appeal memo is kept with the AO for linking the same with the relevant assessment record.
- v.* One set of appeal memo is kept in the office of CIT for placing the same in judicial folder.
- vi.* The appeals are followed up and the Department is effectively represented at every hearing stage.
- vii.* Proper coordination with the Departmental Representative is maintained at every stage by Range Head.
- viii.* The details and information called for by the ITAT/DR should be furnished (in quadruplicate) at the earliest and, in any case at least three days before the date fixed for hearing before the ITAT.

10. Appeals/ Cross Objections Filed by the Assessee

10.1 In cases where appeal to ITAT against the order of CIT(A) is filed by the assessee (whether department has filed appeal or not), the CIT shall ensure to put in place proper mechanism to examine the desirability of filing cross-objections (CO) in suitable cases. As soon as the memo of appeal filed by the assessee is received, a file should be opened in the office of CIT and assigned a proper identification number incorporating the ITA No. allotted by the ITAT and further necessary action taken.

10.2 Officers have to be alert particularly in those cases where CIT(A)'s order was not acceptable but appeal was not filed as tax effect was below the prescribed limit. If the assessee has filed appeal in ITAT in such cases, the CIT shall direct the AO to file cross-objections against that part of the CIT(A)'s order to which he objects, within statutory time limit.

Compliance of ITAT Directions

11. The CIT shall put in place proper mechanism to ensure timely and due compliance to the directions of the ITAT. Close co-ordination between field officers, CIT (DR) and Departmental Representative in the

ITAT has to be ensured so that directions are communicated in time and proper compliance is made to the satisfaction of the Tribunal.

Orders of ITAT containing strictures etc.

12. Orders of the ITAT containing strictures or those which are contrary to Board's orders, notifications, instructions, circulars etc. shall be brought to the notice of the Board (concerned division) immediately by the CIT through CCIT/DGIT under intimation to ITJ section of the Board.

Assistance to Departmental Representatives

13. The Range Head shall ensure that the AO sends a copy of the scrutiny report, comments of Range Head and decision of CIT, to the DR office along with the DR's copy of appeal papers immediately after filing of appeal and obtaining ITA No. Whenever, DR requires any records, clarification or other material, including paper book to be submitted to ITAT, the CIT and Range Head shall ensure that the requirements are complied with promptly.

14. Monitoring Mechanism

- i.* The CIT shall ensure that appeals to ITAT are filed within prescribed time and pursued properly.
- ii.* The CIT shall intimate to the CCIT in his monthly DO, the instances of delayed appeals to ITAT along with the reasons and corrective actions taken. The CCIT shall review due adherence to this instruction on a quarterly basis and take appropriate measures in case of deviations.
- iii.* The cases of material deviations from this instruction, if any, shall be brought to the notice of ITJ section of the Board by the CCIT.

15. This Instruction shall apply to appeals to be filed in ITAT with effect from 22nd August, 2011.

16. Hindi version of instruction to follow.

Note: Reference to the CCIT/CIT in this Instruction includes DGIT/DIT as the case may be.

Annexure-I

TIMELINES FOR FILING APPEAL TO ITAT

<i>Sl. No.</i>	<i>Stages</i>	<i>No. of days</i>	<i>Total Time</i>
1.	Receipt of CIT(A)'s order in the office of CIT	0 day	0 day
2.	Sending the order to AO for necessary action along	5 days	5 days

	with a copy to Range Head		
3.	Entry in the relevant register and submission of scrutiny report in prescribed proforma by AO to Range Head after giving appeal effect	25 days	30 days
4.	Submission of recommendation by Range Head on scrutiny report to CIT along with draft grounds of appeal	10 days	40 days
5.	Decision making by the CIT including finalisation of grounds of appeal and sending the same to AO	7 days	47 days
6.	Actual filing of appeal in ITAT by AO	6 days	53 days
7.	Intimation of Diary/lodging to the office of CIT	2 days	55 days

Annexure- II

Proforma for 'Scrutiny Report' on CIT(A)'s order

Limitation to file appeal under section 253 expires on:

(Parts 1 to 4 are to be filled-in by the AO and 5 to 6 by Range Head)

u TO BE FILLED IN ALL THE CASES OF ORDERS OF CIT(A)

1. Particulars from the order under scrutiny

S. No.	Points	Particulars
<i>i.</i>	Name and address of the assessee	
<i>ii.</i>	PAN	
<i>iii.</i>	Assessment Year	

<i>iv.</i>	Appeal No. and date of the order	
<i>v.</i>	Date of receipt of the order in the office of CIT	
<i>vi.</i>	Date of giving appeal effect	
<i>vii.</i>	Overall Tax effect of the order	

u TO BE FILLED ONLY WHERE ORDERS OF CIT(A) ARE ADVERSE TO REVENUE

2. Analysis of the order under scrutiny

<i>i.</i>	Whether it is combined order for more than one assessment years	Yes / No
<i>ii.</i>	If yes, specify assessment years involved and identify specific issues related to different assessment years for filing separate appeals. Use Annexure, if required.	
<i>iii.</i>	Whether it is combined order for more than one assessee/group case?	Yes/No
<i>iv.</i>	If yes, whether jurisdiction of all assessees falls in the same Range?	Yes / No
<i>v.</i>	If reply to (iv) above is no, identify the AO/Range / CIT having jurisdiction over other assessees for communication of stand taken on common issues?	
<i>vi.</i>	If the proceeding of order under scrutiny was dependent on some other proceedings (say order under section 263 / set aside order /Registration under section 12A / Approval etc.), specify the present appellate status of the other proceedings along with ITA No. /W.P. No. etc.	
<i>vii.</i>	Whether any additional ground was admitted by the CIT(A)?	Yes/No
<i>viii.</i>	If yes, whether the AO was intimated of the new grounds?	Yes / No

ix.	Whether any additional evidence was admitted by CIT(A)?	Yes/No
x.	If yes, whether opportunity to AO was granted under Rule 46A to give comments / counter the same?	Yes/No/NA

3. Scrutiny report on appellate order

A. If the tax effect in I(vii) above is below prescribed monetary limit and case does not fall in any exception of Instruction on monetary limits for filing appeals for the time being in force, detailed scrutiny may not be taken up and only general recommendation as to whether decision of CIT(A) is *prima facie* acceptable on merits or not, may be given.

B. In cases other than at 'A' above, the AO in his scrutiny report shall cover following points, as may be applicable, on each issue where relief is allowed by CIT(A), in a separate Annexure.

i.	Relief allowed by the CIT(A) :-
	u Description of issue involved in brief,
	u Basis of addition/ disallowance made in assessment order,
	u Reasons for grant of relief by CIT(A),
	<i>(Relevant page /para No. of assessment order and CIT(A)'s order for each issue may also be specified)</i>
ii.	Tax effect in respect of each issue on which relief is allowed by CIT(A) is to be worked out separately.
iii.	Whether any remand report was called for by the CIT(A)?
iv.	If yes, AO's comments in brief on relevant issues above should be given. Specify whether relief by CIT(A) is in conformity with AO's views in the remand report?
	<i>(Attach copy of CIT(A)'s letter/order calling for the report and also the remand report submitted by the AO along with assessment order).</i>

v.	Whether any factual finding given by CIT(A) is contrary to the material on record? If yes, specify in detail indicating specific para of order under scrutiny & material on record contradicting such a finding.
vi.	If the decision of CIT(A) is not acceptable, specify reasons (also taking into account the remand report, if any, on the issue)
vii. *	Whether similar issue was involved in the case of assessee in earlier years? If yes, status of appeal etc. may be indicated.
viii.	If the same issue is involved in subsequent year in the case of assessee, the stand /action taken by AO/status of appeal, if any, may be indicated.
ix.	Has CIT(A) relied upon any judicial decision? If yes, has a copy been annexed or citation given in case of reported decisions? (Note: Whether the relied upon decision has been challenged in further appeal? If so, the present status may be given.)
x.	Whether the issue arises out of audit objection?
xi.	If yes, whether audit objection is included in Draft Para? Also state whether Audit objection has been accepted by the department or not.

* Item vii is extremely important, if applicable, (the involvement of issue in earlier year may already be indicated in assessment order or CIT(A)'s order)

4. General

i.	Aggregate of tax effects in 3B(ii) above	
ii.	Whether the tax effect above is below the limit prescribed for filing of appeal in CBDT Instruction on monetary limits?	Yes/No/NA
iii.	Whether the case falls in any of the exceptions laid down in the said Instruction? If so, specify clause No.?	
iv.	Due date for submission of report to Range head (30 days from the	

	<i>date of receipt of CIT(A)'s order in the office of CIT)</i>	
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Submitted to the Addl./Jt. CIT, Range- for kind consideration & further action. The assessment records in volumes are also sent herewith.

<i>Date:</i>	<i>Signature</i>
<i>Place:</i>	<i>Name & Designation of the AO</i>

5. Recommendation of Range head on scrutiny report by AO

<i>i.</i>	For each issue on which relief is allowed by the CIT(A) specify the issue involved with proper referencing:- (issues involved to be mentioned in brief, for illustration – <i>disallowance of interest for interest free loan given; repair expenses treated as capital; accrual of interest income on Bonds; deduction under section 80-IB etc.</i>)	
<i>ii.</i>	Whether any additional evidence was admitted without granting opportunity to AO? If yes, give details.	
<i>iii.</i>	Whether any finding of fact given by CIT(A) is inconsistent with material on record, making his order perverse? (see Note below)	
<i>iv.</i>	If so, give details and explain which parameters of perversity are satisfied and how? (Refer to Note below)	
<i>v.</i>	Whether there are any mistakes apparent from record which require filing of rectification application before CIT(A)?	
<i>vi.</i>	Whether the decision of CIT(A) is acceptable on merits? If not, give reasons for each issue.	
<i>vii.</i>	Draft specific ground to be taken before ITAT.	

6. Final Summary of report

Appeal is recommended on issues Nos.	, &
Aggregate tax effect on issues on which appeal is recommended	
Due date for submission of report in CIT office (40 days from the date of receipt of CIT(A) order in CIT office)	

Submitted to the CIT- for kind consideration & further action.

<i>Date:</i>	<i>Signature of the Range head</i>
<i>Place:</i>	<i>Name & Designation</i>

7. Decision by the CIT on the scrutiny report

A. Issue wise decision of the CIT, as to whether appeal is to be filed or not, may be recorded with reasons, keeping in view the line of argument the DR is expected to take before ITAT at the time of hearing:

Issue No 1.

Issue No. 2 and so on

Aggregate tax effect on issues proposed to be contested in the ITAT	
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B. Grounds of appeal to be raised before the ITAT may be framed in respect of the issues not accepted by the CIT.

C. In case of a combined order or order in a group case, involving more than one assessee falling under jurisdiction of different CsIT, the CIT shall communicate the stand taken on common issues to the CIT having jurisdiction over other case(s).

8. Categorization of final decision by CIT

A. The *appeal is not to be filed*

- i. As the order is acceptable on merits, or
- ii. Even though the order is not acceptable, appeal is not being filed only on the consideration that the tax effect is less than the limit prescribed in CBDT's Instruction on monetary limits.

B. *Appeal is to be filed* on the 'grounds of appeal' framed above

- i.* As the order is not acceptable on merits, or
- ii.* Though tax effect is below the prescribed limit, the case falls under the exceptions (to be specified) of the Instruction of CBDT on monetary limits.
- iii.* Authorisation under section 253(2) of the I.T. Act is issued separately. Appeal to be filed accordingly.

<i>Date:</i>	<i>Name & Signature</i>
<i>Place:</i>	<i>Commissioner of Income-tax</i>

9. Filing of appeal

- i.* After decision of the CIT, the DCIT/ACIT/ITO(J) shall send authorization letter and grounds of appeal along with the scrutiny report to the AO and ensure that appeal to ITAT is filed within time limit.
- ii.* A copy of scrutiny report is to be sent to the DR along with his copy of appeal papers. (NOT TO BE ENCLOSED WITH OTHER SETS TO BE FILED IN ITAT)

The ITA No. and date of filing should be obtained from AO and recorded.

ITA No. : dated :

Note on perversity:

An order or finding is perverse on facts, if it falls under any of the following categories:

- (a) The finding is without any evidence. Briefly indicate how it is so.
- (b) The finding is contrary to the evidence. Briefly state how it is so with particular reference to documents on record.
- (c) There is no direct nexus between the conclusion of fact and primary fact upon which that conclusion is based? If it is so, briefly state how it is so.
- (d) When an authority draws a conclusion which cannot be drawn by any reasonable person or authority on the material and facts placed before it. (*Sudarshan Silk & Sarees v. CIT* 300 ITR 205 SC)